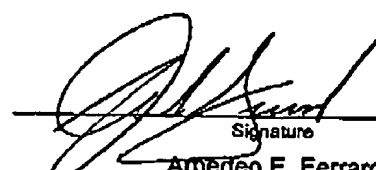


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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 102.0010-01000	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]  on _____  Signature _____  Typed or printed name _____		Application Number <b>08/480,461</b>	Filed <b>June 7, 1995</b>
		First Named Inventor <b>Gary K. Michelson</b>	
		Art Unit <b>3764</b>	Examiner <b>Michael Brown</b>
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.  This request is being filed with a notice of appeal.  The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> Applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/98) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <b>37,129</b> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		 Signature <b>Amedeo F. Ferraro</b> Typed or printed name <b>310-286-9800</b> Telephone number <b>June 27, 2006</b> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input checked="" type="checkbox"/> *Total of <b>1</b> forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.8. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**RESPONSE UNDER 37 C.F.R. 1.116  
EXPEDITED PROCEDURE  
EXAMINING GROUP 3764**

**PATENT**  
Attorney Docket No. 102.0010-01000  
Customer No. 22882

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re Application of:	)	
Gary K. Michelson	)	Confirmation No.: 9274
Serial No.: 08/480,461	)	
Filed: June 7, 1995	)	Group Art Unit: 3764
For: INSTRUMENTATION FOR THE	)	
SURGICAL CORRECTION OF HUMAN	)	Examiner: Michael Brown
THORACIC AND LUMBAR SPINAL	)	
DISEASE FROM THE LATERAL	)	
ASPECT OF THE SPINE	)	

**JUN 27 2006**

Mail Stop AF  
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Sir:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

In reply to the Final Rejection dated December 27, 2005, and further to Applicant's Reply to Office Action dated April 5, 2006 (the "Reply"), Applicant submits the following remarks for consideration by the Members of the pre-appeal brief conference.

**I. Brief Background**

The application includes eleven independent claims generally drawn to instruments for use in spinal surgery, of which two have been withdrawn and five have been allowed. Independent claims 95, 102, 108, and 139 stand rejected. In response to the Examiner's final rejection mailed December 27, 2005, Applicant submitted the Reply traversing the Examiner's rejections under 35 U.S.C. §§ 102(b) and 103(a). The Examiner has yet to mail an Advisory Action addressing Applicant's response.

**II. Clear Errors or Omissions**

(1) The Examiner's objection to claims 186, 187, 194, 195, 200, 204, and 208; rejection of claims 181-185, 188-193, 196-199, 201-203, 205, and 206 under 35 U.S.C.

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§ 102(b) as being anticipated by U.S. Patent No. 4,878,915 to Brantigan; and rejection of claim 207 under 35 U.S.C. § 103(a) as being unpatentable over Brantigan in view of U.S. Patent No. 4,772,286 to Goble et al. are erroneous because dependent claims 181-208 depend from allowed independent claim 131, or claims dependent therefrom and thus should be allowed. (See Reply, page 1, paragraph 3).

(2) The Examiner's rejection of claims 95-97, 99-103, and 106 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,545,374 to Jacobson is erroneous because:

(a) the anchor wires 33 of Jacobson do not have a portion adapted to bear against each of the endplates of the adjacent vertebral bodies as recited in independent claims 95 and 102 (see Reply, page 2, paragraph 2);

(b) the anchor wires 33 of Jacobson do not have a length extending from the body of the cannula that is greater than the depth of the spinal disc intermediate the adjacent vertebral bodies as recited in claims 95 and 102 (see Reply, page 2, paragraph 2); and

(c) the device of Jacobson is a cannula and not a spinal distractor "used to distract a portion of the spine" as contended by the Examiner (see Reply, page 2, paragraph 3).

(3) The Examiner's rejection of claims 95-101, 108-113, 116-121, 124-127, 129, 130, 132, 135, 136, 139, 209-213, 216-221, 224-233, 236, and 241 under 35 U.S.C. § 102(b) as being anticipated by Brantigan is erroneous because:

(a) the teeth or prongs 23 of Brantigan do not have a portion adapted to bear against each of the endplates of the adjacent vertebral bodies as recited in independent claims 95, 108, and 139 (see Reply, page 3, paragraph 1);

(b) the teeth or prongs 23 of Brantigan do not have a length that is greater than the depth of the spinal disc intermediate the adjacent vertebral bodies as recited in claim 95, or a length that is greater than the depth of the disc space as recited in claim 108 (see Reply, page 3, paragraph 1); and

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(c) the drill guard of Brantigan does not have a separable disc penetrating extension as recited in independent claim 139 (see Reply, page 3, paragraph 2).

(4) The Examiner's rejection of claims 137 and 234 under 35 U.S.C. § 103(a) as being unpatentable over Brantigan in view of Goble is erroneous because:

(a) the disclosures of Brantigan and Goble are drawn to non-analogous fields of endeavor relative to each other and therefore cannot be combined to arrive at Applicant's claimed invention (see Reply, page 4, paragraph 3); and

(b) since Goble fails to teach that the threads of the prosthetic ligament are equivalent to any threaded device taught by Brantigan, the prosthetic ligament taught by Goble cannot be cited as an obvious equivalent. (See Reply, paragraph bridging pages 4 and 5).

### III. Conclusion

In view of the foregoing remarks, it is respectfully submitted that the claims are patentable. Therefore, it is requested that the Members of the Pre-Appeal Brief Conference reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,  
MARTIN & FERRARO, LLP

Dated: June 27, 2006

By:   
Amedeo F. Ferraro  
Registration No. 37,129

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